



United States
Department of
Agriculture

Forest
Service

Alaska Region
Tongass National Forest

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File Code: 1570-1/2720

Date: September 3, 2002

Mr. Larry Hooton
Seahook Charters

Juneau, AK 99803

Dear Mr. Hooton:

Pursuant to 36 CFR 251, Subpart C, this is my decision concerning your appeal, filed on May 3, 2002 (Appeal #02-10-05-0001 A251), in which you appeal the terms and conditions of your outfitter and guide special use authorization (JUN229.) Specifically, you are appealing the allocation of brown bear hunts for your operations in the 2002 operating season; and the restriction of outfitters and guides to hunt goats in the Tracy Arms, Endicott Arm, Fords Terror, and Port Houghton areas. The Juneau District Ranger signed your permit on April 18, 2002.

On June 18, 2002, the Juneau District Ranger submitted a Responsive Statement to me addressing points raised in your appeal. A copy was provided to you. On July 9, 2002, I received your comments to the Responsive Statement. You requested an oral presentation, which was completed on July 31, 2002; therefore, pursuant to 36 CFR 251.98, the appeal record was closed effective August 01, 2002.

The following discussion and decision is based on a review of all information provided by you and the Juneau District Ranger, as well as applicable laws, regulations and written policy.

Background

Brown Bear Hunts

The management of commercial brown bear guiding activities on the Tongass National Forest has been a concern for a number of years. In 1994, the former Chatham Area Forest Supervisor issued a moratorium on new brown bear outfitter and guide special-use authorizations in Game Management Unit 4 (GMU 4, comprised of Admiralty, Baranof, and Chichagof Islands); and the amount of guiding assigned to existing outfitters and guides. This moratorium was issued in response to concerns raised by the Alaska Big Game Commercial Services Board, the Alaska Department of Fish and Game (ADF&G), Forest Service staff, and a representative group of guides operating in GMU 4. These concerns related to brown bear harvest trends and the rapid increase in the number of guides authorized to operate in GMU 4. The 1994-moratorium froze use levels at 1993 numbers, and was in effect for the 1994 and 1995 operating seasons.



On January 6, 1999, the Assistant Tongass Forest Supervisor sent a letter to all outfitters and guides stating that the Forest Service was unable to respond to any new applications for brown bear guiding special-use authorizations in GMU 4 until an environmental analysis was completed and a decision was signed regarding guide use in the area. Existing permits were reissued at 1998 use levels. The number of non-resident guided hunters still rose from 123 hunters in calendar year 1997 to 154 hunters in 1999.

In March 2000, the Alaska Professional Hunters Association requested that the Forest Service hold the number of brown bear permits in GMU 4 to existing levels of permits and number of clients. In April 2000, the Tongass Forest Supervisor and staff met with the Director of Wildlife Conservation for ADF&G. At this meeting, the Director also requested that the Forest Service continue to limit the number of brown bear guides. This request was documented in a letter from ADF&G dated July 5, 2000.

On August 23, 2000, the Tongass Forest Supervisor made the decision to not process any new applications for brown bear guiding in GMU 4 and GMU 1, and instructed District Rangers to manage brown bear use in "hunts" (one client equals one hunt) beginning January 1, 2001 (Responsive Statement, Exhibit 4). The number of units allocated to existing guides was based on the number of registration hunt permits (actually hunted) on file with ADF&G for calendar years 1997 and 1998 for GMU 4 and calendar years 1998 and 1999 for GMU 1. There was an update to this letter on April 2, 2001 and the Forest Supervisor decided to continue this decision for the 2002 season (Responsive Statement, Exhibit 3).

Goat Hunts

In a letter to guides dated March 13, 2002, (Responsive Statement, Exhibit 13) the Juneau District Ranger informed guides that, because of concerns for hunt quality, and because there appears to be a competitive interest in goat hunting, the number of authorized goat hunts would be held to the 2001 level until a recreation carrying capacity was completed and a prospectus for goat hunts issued. The District received four requests for goat hunts in Endicott Arm, Fords Terror, and Port Houghton for the 2002 season. The letter to outfitters and guides also stated that hunts authorized in 2001 and beyond, would not be counted as priority use days, which would make more hunts available through a prospectus and competitive bid process.

In your notice of appeal you request a review of the District Ranger's decision for the following reasons:

1. You feel that you are entitled to the four brown bear hunts based on the actual hunts that took place in 1997.
2. The delays in the completion of the Shoreline EIS have prevented you from obtaining these brown bear hunts.
3. The penalties for the 1997 plea agreement have endured beyond what you had anticipated in the plea agreement.

You have requested the following relief:

1. Allocate of four brown bear hunts to you for the year 2002 and 2003 (if still restricted by USFS) Special Use Permit as requested in appeal.
2. Allow you the option of utilizing these four brown bear permits in GMU-4 or GMU-1.
3. The USFS cease and desist from continuing to penalize you for the 1997 Court Case Plea Agreement, which was entered into in good faith with the US Attorney based on an agreement with the USFS Acting Juneau District Ranger.
4. The USFS to not restrict the hunting of goats in the areas mentioned in the 2002 permit.

Discussion

The plea agreement you signed on December 11, 1998 explains, under the violations to which you plead guilty, that you failed to report to the Forest Service your actual use on the Tongass National Forest (II. FACTS IN SUPPORT OF PLEA AND SENTENCE, Responsive Statement, Exhibit 8). As a result the Juneau District Ranger recognized only the one brown bear hunt that was correctly reported for the 1997 operating season. That one hunt was used for the allocation of brown bear hunts as specified by the Forest Supervisor. The 1997 permit and the first sentence of Appendix 2 of the permit state that actual use figures were to be submitted to the Juneau Ranger District on or **before December 31, 1997** (Exhibit 9 of the Responsive Statement). Furthermore, Appendix 2 states "...we request that you submit the total number of contracts for brown bear, black bear, and Mt. Goats that you had with the State of Alaska for conducting big game guiding." This was not done and was noted in the plea agreement. While it appears the effects of this plea agreement are lingering, the year of the violation and loss of credit for incorrectly reported hunts simply coincided with the 1997 and 1998 years used to calculate allocations. Had your violation occurred prior, or after, those two years, there would have been no effect on your allocation.

The Shoreline Outfitter Guide DEIS was distributed for public comment during July 2002 and, since a decision cannot be implemented, and a prospectus completed, until at least summer of 2003, it is likely that the restrictions for brown bear hunting will extend into the 2003 season. This affects all outfitters and guides wanting to hunt brown bear in GMU 1 and GMU 4.

Since you were credited with one bear hunt for each of the 1997 and 1998 operating seasons you were allocated the average of those two seasons, or one hunt, for the 2002 operating season. You conducted no hunts in GMU-1 in either the 1998 or 1999 operating seasons and, therefore, were allocated no brown bear hunts in GMU 1 per direction in the August 23, 2000 letter from the Forest Supervisor.

You were not authorized to hunt goats in the Endicott Arm, Fords Terror, and Port Houghton in previous years. Under the Terms and Conditions of your permit, the authorized officer, (Juneau District Ranger), has the discretion to prescribe new terms, conditions, and stipulations when a new permit is issued. (Exhibit 9, page 3, II.E. Discretion of Forest Service). Forest Service Manual 2712.1-Prospectus notes that when there is a demonstrated public interest of a service that the best qualified permittee shall be obtained by issuing a prospectus. Until an analysis is completed and a prospectus is issued, the authorizing officer has the discretion to be cautious in the issuance of goat hunting permits where reasonable or necessary.

Decision

The process used by the Juneau District Ranger to allocate brown bear hunts for the 2002 operating season was within his discretionary authority and consistent with direction provided in the Forest Supervisor's letter of April 2, 2002. The decision by the Juneau District Ranger not to authorize additional goat hunts in Endicott Arm, Fords Terror, and Port Houghton is within his discretionary authority and is consistent with Forest Service Manual direction (FSM 2712.1).

The Juneau District Ranger's decision is affirmed.

Pursuant to 36 CFR 251.87(c), written decisions by a District Ranger or Monument Ranger are subject, on request, to a second level of review by the Regional Forester. The request for a second level of review must be filed, in writing, within 15 days of this decision at the address below.

Regional Forester
Alaska Region, Region 10
USDA Forest Service
P.O. Box 21628
Juneau, AK 99801

The appeal must be filed in accordance with 36 CFR 251.90, content of notice of appeal. Upon receipt of your request, the Regional Forester will promptly request the first level appeal file from this office. The second level review will be conducted on the existing record and no additional information will be added to the file.

Sincerely,

/s/ Fred S. Salinas
FRED S. SALINAS
Deputy Forest Supervisor